

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES KEITH REASTER,

Petitioner,

Case No. 3:06 CV 1719

-vs-

MEMORANDUM OPINION

KHELLEH KONTEH,

Respondent.

KATZ, J.

This action was transferred to the United States Magistrate Judge for a Report and Recommendation. The Magistrate Judge filed her Report and Recommendation on May 30, 2008. Under the relevant statute:

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (1982). On June 17, 2008 Petitioner was granted an extension to July 7, 2008 to file objections. No objections have been filed. The failure to file written objections to a Magistrate Judge's report and recommendation constitutes a waiver of a *de novo* determination by the district court of an issue covered in the report. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984) affirmed, 474 U.S. 140 (1985); see United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

Petitioner did file a motion for evidentiary hearing, appointment of counsel, and for extension of time to file objections also on June 17, 2008 (Doc. 22). The Court had, that same day, already issued an extension, rendering Petitioner's request for an extension moot (as it had already been granted). The other issues raised in Petitioner's June 17 filing (Doc. 22) were properly addressed before the Magistrate Judge, and objections to the Magistrate Judge's findings

should have been addressed as objections to the Report and Recommendation and should have been filed, in accordance with Petitioner's extension request and this Court's order, by July 7, 2008. Petitioner has not submitted objections within that time frame (nor for over a month afterward).

The Court has reviewed the Magistrate's Report and Recommendation, the findings and recommendations contained therein, and the record in this case. The findings and recommendations of the Magistrate Judge are well taken and there are no legal points which would be arguable on their merits in an appeal of this case. Furthermore, the Court has determined sua sponte that no certificate of probable cause should issue in this case as any appeal would lack substantial merit.

It is therefore,

ORDERED, that the Report and Recommendation be, and hereby is, adopted as the Order of this Court. The Petition for Writ of Habeas Corpus is denied. The motion for order of compliance is denied (Doc. No. 18). The motion for evidentiary hearing and appointment of counsel is denied. (Doc. No. 22).

FURTHER ORDERED that under 28 U.S.C. §1915(a), an appeal of this case should not proceed *in forma pauperis* as it would not be taken in good faith.

FURTHER ORDERED that a motion for certificate of probable cause under 28 U.S.C. §2253 is hereby denied *sua sponte*.

S/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE